

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD  
CIVIL REVISION APPLICATION No 970 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? No.

2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

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UNITED INDIA INSURANCE CO LTD

Versus

SURGYAN W/O MANGALSING RATHOD

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Appearance:

MR DARSHAN M PARIKH for Petitioner

SERVED for Respondent No. 1 and 4 (Nos. 2 & 3  
minors)

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CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 07/11/96

ORAL JUDGEMENT

By way of the present Civil Revision Application under Section 115 of the Code of Civil Procedure, the petitioner-United India Insurance Company Limited has challenged the legality of the order dated 12th December 1993 passed by the Motor Accidents Claims Tribunal (Main) of Kachchh at Bhuj, below application Exh.1, in Miscellaneous Motor Accidents Claim Application No. 45 of 1992. By the aforesaid order, the Tribunal allowed the application filed by the claimants and condoned the delay of 8 months and 3 days caused in filing the claim petition under the Motor Vehicles Act, 1988.

The minor claimants' father Mangalsinh Rathod died due to the injuries sustained by him in a vehicular

accident on 26th November 1990. At the relevant time, the deceased was travelling on a scooter which was knocked down by the vehicle bearing RTO Registration No. GTY 6220. The claimants, who are heirs of the deceased Mangalsinh, filed a claim petition in the Tribunal on 20th January 1992. As there was delay of 8 months and three days in filing the claim petition, the claimants filed Miscellaneous Civil Application No. 45 of 1992 for condoning the said delay. It was stated in the condonation application that, since the claimants Nos. 1 and 2 being minors and claimant No.2 was out of station after the death of Mangalsinh, they could not file claim petition within time. It was also averred that the claimants were not aware about the legal position and provisions of the Act and, therefore, due to ignorance, they could not file the petition in time.

The Tribunal, by order dated 12th December 1993, condoned the delay of 8 months and 3 days in filing the claim petition and directed that the claim petition be registered accordingly.

In this revision, the petitioner-United India Insurance Company Limited challenged the order dated 12th December 1993 passed by the Motor Accidents Claims Tribunal (Main) of Kachchh at Bhuj, below application Exh.1 in Miscellaneous Civil Application No. 45 of 1992.

The Apex Court in the case of Dhannalal vs. D.P. Vijayvargiya, reported in (1996) 4 Supreme Court Case, 652, held as under:

"From the amending Act it does not appear that the said sub-section (3) had been deleted retrospectively. But at the same time, there is nothing in the amending Act to show that benefit of deletion of sub-section (3) of Section 166 is not to be extended to pending claim petition where a plea of limitation has been raised. When sub-section (3) of Section 166 has been omitted, then the Tribunal has to entertain a claim petition without taking note of the date on which such accident had taken place. The petition cannot be thrown out on the ground that such claim petitions were barred by time when sub-section (3) of Section 166 was in force."

Admittedly, in the present case, plea of limitation is raised when the amendment in Section 166(3) of the Act came into force, because the Insurance Company has challenged in this revision application the order of the Tribunal condoning the delay caused in filing the claim petition. The Apex Court has considered the beneficial

legislation of the amending Act and observed that it is a matter of common knowledge that majority of the claimants for such compensation are ignorant about the period during which such claims should be preferred. After the death due to the accident of the breadwinner of the family, in many cases such claimants are virtually on the streets. Therefore, the Parliament rightly thought that prescribing a period of limitation and restricting the power of the Tribunal to entertain any claim petition beyond the period of twelve months from the date of the accident was harsh, inequitable and in many cases was likely to cause injustice to the claimants. The decision rendered by the Supreme Court in the case of Dhannalal (supra) is applicable to the facts of the present case. The amending Act came into force from 14th November 1994 and on that day the plea of limitation was pending before this court, which is raised by the Insurance Company in this revision application.

The Tribunal after taking into consideration the reasons shown by the claimants has rightly condoned the delay. There is no illegality or material irregularity found to have been committed in exercise of the jurisdiction vested on the Tribunal in condoning the delay of 8 months 3 days in filing the claim petition. No error of jurisdiction is pointed out by the learned advocate for the Insurance Company.

In the result, this Civil Revision Application is dismissed. Rule is discharged with no order as to costs. The ad-interim stay is vacated.

November 7, 1996 (M.H. Kadri, J.)  
(swamy)  
True copy